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February 8, 1957
Opinion No. 57-25

REQUESTED BY: Honorable W. B. Barkley
House of Representatives

OPINION BY: ROBERT MORRISON
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QUESTIONS: 1. Can a municipality enter
into a lease agreement with
the federal government?

2. Can the municipality
thereafter sell to a third
party the lease agreement
with the federal government
for the purpose of financing
the building construction
required under the lease?

CONCLUSIONS: 1. Yes.

2. Yes.

As a broad general proposition of law, cities and towns, regardless of how organized, have only such powers as are expressly or by implication conferred upon them. City of Tucson vs. Arizona Alpha of Sigma Alpha Epsilon (1948), 67 Ariz. 330, 334, 195 P.2d 562, citing McClintock vs. City of Phoenix (1922), 24 Ariz. 155, 207 Pac. 611.

Authority to sell, lease, or exchange surplus property to the federal government is expressly given cities and towns by A.R.S. § 9-405, provided the use is for governmental purposes. A further provision in the section requires a special election to be called in those instances where the valuation of the property involved exceeds fifty thousand dollars.

The next phase of the problem concerns the right of the city or town to sell the resulting lease contract in order to finance the building. A.R.S. § 9-241 is a general grant of power for the purchase and sale of property by towns incorporated under the Common Council form of government. It provides in part:

"The corporation may purchase, receive, hold, lease and convey property, real and personal, necessary or proper to carry out the purposes of the corporation, within or without its limits."

Article I, Ch. 4, Title 9, spells out the authority of cities and towns relating to purchase, sale or lease of property. A.R.S. § 9-401 grants powers for the acquisition of land by a city or town. A.R.S. § 9-402 covers the sale and disposition of property. Among other provisions, this section states:

"A city or town may sell and convey all or any part of its real or personal property whether or not the property is devoted exclusively to public use."

If the valuation of the property involved exceeds twenty-five thousand dollars, however, a special election after due notice is required by A.R.S. § 9-403.

A lease agreement is property and a sale or disposition of such property falls within A.R.S. §§ 9-402 and 9-403, and the municipality, therefore, would have the authority to sell such an agreement if the required procedure therein is followed.

Notwithstanding what has previously been said in this opinion, different rules may apply in the case of cities operating under charter governments. A.R.S. § 9-284 sets forth that charter provisions prevail when in conflict with any law relating to cities containing a population of more than three thousand five hundred inhabitants in force at the time of the adoption and approval of the charter.

In City of Tucson vs. Arizona Alpha of Sigma Alpha Epsilon, supra, a deed of property was attacked because no notice had been given or bids received as required under what is now A.R.S. § 9-402. The Court ruled that the City of Tucson acted within the powers of its charter, and at page 336 of 67 Arizona Reports, held:

"... the sale or disposition of property by charter cities is not a matter of general or public concern, and that the provisions of section 16-801 (now A.R.S. § 9-402) relating to the sale of real estate, which is a limitation upon the powers of cities and towns ... have no application to charter cities and constitute no limitation upon them."
(Parenthetical material supplied).

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It is the opinion of this office, therefore, that cities and towns have the authority to enter into a contract with the federal government to lease a building and sell the contract thereafter to finance the building when done within the framework of A.R.S. §§ 9-405, 9-402 and 9-403 and that charter government cities are governed in the matter of acquisition and disposition of property by provisions within their respective charters.

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